

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

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Attorneys for DORA BAIRES, individually, and
on behalf the estate of JUAN CARLOS
BAIRES; and Teofilo MIRANDA, an
individual.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DORA BAIRES, et al.,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA; et al.,

Defendants.

No.: C 09-05171 CRB

**STIPULATION AND ~~PROPOSED~~
ORDER TO ALLOW PLAINTIFFS TO
FILE SECOND AMENDED
COMPLAINT**

STIPULATION AND [PROPOSED] ORDER

Plaintiffs Dora Baires and Teofilo Miranda (“Plaintiffs”); Defendants United States of America, Janet Napolitano, John P. Torres, James T. Hayes, Nancy Alcantar, Jeffrey Sherman, Jose Rodriguez, and Timothy Shack (collectively “Federal Defendants”); and Defendants the County of Kern, Kern County Sheriff’s Department, Kern Medical Center, Lerdo Detention Facility, Donald Youngblood, and Khosrow Mostofi, M.D., (“Kern County Defendants”) (“Federal Defendants” and “Kern County Defendants” collectively herein “Defendants”), through their respective counsel of record, hereby agree and stipulate as follows:

1. Whereas, Plaintiffs filed their original complaint in this Action on October 30, 2009.

2. Whereas, Plaintiffs filed their First Amended Complaint in April 1, 2010 (“FAC”).

3. Whereas, on June 11, 2010, the Federal Defendants filed the Individual Federal Defendants’ Notice of Motion and Motion to Dismiss Plaintiffs’ First Amended Complaint Or, in the Alternative, for Summary Judgment.

4. Whereas, on June 12, 2010, the Federal Defendants filed the United States’ Amended Notice of Motion and Motion to Dismiss Plaintiffs’ First Amended Complaint or, in the Alternative, for Summary Judgment (“Individual Federal Defendants’ Notice of Motion and Motion to Dismiss Or, in the Alternative, for Summary Judgment” and “Amended Notice of Motion and Motion to Dismiss or, in the Alternative, for Summary Judgment” collectively herein “Motions to Dismiss”).

5. Whereas, on September 8, 2010, the Court issued an Order granting the Motions to Dismiss and dismissing Plaintiffs’ First Claim for Relief for Deliberate Indifference to Medical Needs, Second Claim for Relief for Deliberate Indifference to Medical Needs, Fifth Claim for Relief - *Bivens* Claim for Equal Protection Violations, Sixth Claim for Relief - *Bivens* Claim for Equal Protection Violations, Seventh Claim for Relief - Violation of the Americans with Disabilities Act and Injunctive Relief, Seventeenth Claim for Relief, Federal Tort Claims Act Claim for Negligence, Eighteenth Claim for Relief, Federal Tort Claims Act Claim for Negligence, Nineteenth Claim for Relief - Federal Tort Claims Act Claim for Medical Malpractice, Twentieth Claim for Relief - Federal Tort Claims Act Claim for Medical Malpractice, Twenty-First Claim for

1 Relief - Federal Tort Claims Act Claim for Negligent Establishment of Policy for Provision of
2 Medical Care to Immigration Detainees, Twenty-Second Claim for Relief - Federal Tort Claims
3 Act Claim for Negligent Establishment of Policy for Provision of Medical Care to Immigration
4 Detainees, Twenty-Third Claim for Relief - Federal Tort Claims Act Claim for Negligent
5 Application of Policy for Provision of Medical Care to Immigration Detainees, Twenty-Fourth
6 Claim for Relief - Federal Tort Claims Act Claim for Negligent Application of Policy for Provision
7 of Medical Care to Immigration Detainees, Twenty-Fifth Claim for Relief - Federal Tort Claims Act
8 Claim for Intentional Infliction of Emotional Distress, Twenty-Sixth Claim for Relief - Federal Tort
9 Claims Act Claim for Intentional Infliction of Emotional Distress, Twenty-Seventh Claim for Relief -
10 Federal Tort Claims Act Claim for Negligent Training, Supervision, and/or Hiring, Twenty-Eighth Claim
11 for Relief - Federal Tort Claims Act Claim for Negligent Training, Supervision, and/or Hiring claims
12 against the Federal Defendants without prejudice. It is Plaintiffs' understanding that the Court did
13 not dismiss Plaintiffs' Twenty-Ninth Claim for Relief - Claim for Declaratory and Injunctive Relief
14 Based on Violations of the Fifth and Eighth Amendments to the United States Constitution.

15 6. Whereas, Plaintiffs now seek to file their Second Amended Complaint to include
16 additional allegations against the Federal Defendants.

17 7. Whereas, the Defendants do not oppose the filing of Plaintiffs' Second Amended
18 Complaint and are willing to stipulate to the filing of Plaintiffs' Second Amended Complaint for
19 the sake of judicial economy.

20 8. Plaintiffs and Defendants hereby stipulate, pursuant to Rule 15(a)(2), that Plaintiffs
21 may amend their complaint and file their Second Amended Complaint by or before November 5,
22 2010, and that Defendants shall have thirty (30) days to respond to the Second Amended
23 Complaint after filing, provided that no new Federal Defendants are named. If Plaintiffs name new
24 Federal Defendants, the Federal Defendants shall have sixty (60) days to respond to the Second
25 Amended Complaint after filing.
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1 IT IS HEREBY STIPULATED AND AGREED, by and between the parties through their
2 respective counsel of record that:

3 Plaintiffs may file a Second Amended Complaint by November 5, 2010. Defendants shall
4 have thirty (30) days to respond to the Second Amended Complaint after filing, provided that no
5 new Federal Defendants are named. If Plaintiffs name new Federal Defendants, the Federal
6 Defendants shall have sixty (60) days to respond to the Second Amended Complaint after filing.

7 **IT IS SO STIPULATED**

8 DATED: September 20, 2010.

9 REED SMITH LLP

10 By /s/ Jayne E. Fleming
11 Jayne E. Fleming
12 Attorneys for Plaintiffs

13 DATED: September 20, 2010.

14 JOSEPH P. RUSSONIELLO

15 By /s/ Abraham A. Simmons
16 Abraham A. Simmons Assistant United States
17 Attorney
Attorneys for Federal Defendants

18 DATED: September 20, 2010.

19 THERESA A GOLDNER, COUNTY COUNSEL

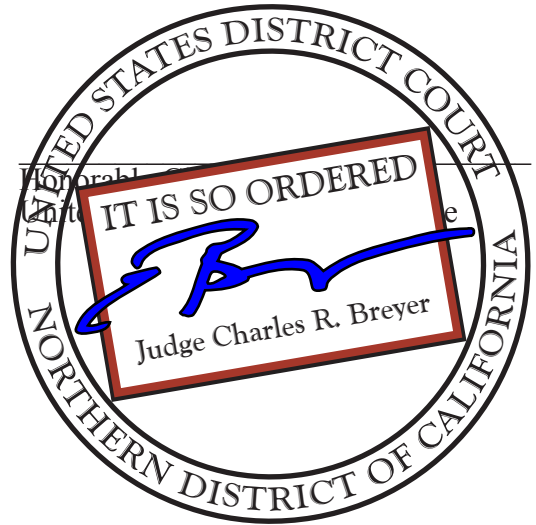
20 By /s/ Marshall S. Fontes
21 Marshall S. Fontes, Deputy County Counsel
22 Attorneys for Kern County Defendants
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~~PROPOSED~~ ORDER

IT IS HEREBY ORDERED, upon the consent of the parties pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, that Plaintiffs shall file their Second Amended Complaint no later than November 5, 2010.

DATED Sept. 21, 2010.



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